

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-4318-2023

Date of Decision:-02.02.2023

Vinod Kumar.

.....**Petitioner.**

Versus

State of Haryana.

.....**Respondent.**

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. K.L. Saini, Advocate for the Petitioner.

Mr. Kanwar Sanjiv Kumar, Assistant General Haryana.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition is for the grant of regular bail under Section 439 Cr.PC in case FIR No.88 dated 11.04.2022 under Sections 20 and 60 of the NDPS Act, 1985 (Section 29 NDPS Act added later on) registered at Police Station Lakhan Majra, Rohtak, District Rohtak (Haryana).

The brief facts of the case are that while the police party was on patrolling duty a special informant gave information that Vinod (petitioner) and Kamaleep (since granted bail vide order dated 17.10.2022 passed by Additional Sessions Judge, Rohtak under Section 167 (2) Cr.PC Annexure P-1) were indulging in the working of selling intoxicating substances. They would come on a motor cycle along with the contraband from the side of village Nandal and if a barricading was done, they could be nabbed with the

intoxicating substances. Based on the aforementioned information and after complying with Section 42 of the NDPS Act a barricading was installed. After sometime two persons were seen coming a motor cycle. They were stopped. The driver of the motor cycle disclosed his name as Vinod @ Monu (petitioner). In the meantime the person sitting on the rear seat of the motor cycle carrying a white plastic polythene in his hands ran towards the fields. However, he was nabbed and on asking disclosed his name as Kamaldeep. The motor cycle was bearing registration number HR-33D-8482 MARKA HF-DELUXE and colour Black. After complying with the provisions of Section 50 of the NDPS Act a recovery of 2kg 500 grams of Charas came to be effected from the plastic polythene being carried by the co-accused Kamaldeep.

The Counsel for the petitioner contends that the Petitioner has been falsely implicated in the present case. In fact the alleged recovery is from Kamaldeep and not from the Petitioner and the petitioner could not be said to be in conscious possession of the same. The said fact can also be seen from the conduct of Kamaldeep who tried to run away from the spot whereas the Petitioner did not. Since the petitioner was a first time offender and his co-accused Kamaldeep had been granted the concession of bail vide order dated 17.10.2022 by Additional Sessions Judge, Rohtak (Annexure P-1) the petitioner was entitled to the similar concession more so when he was in custody since 11.04.2022 and none of the prosecution witnesses had been examined so far.

The Counsel for the State on the other hand contends that the petitioner was the driver of the motor cycle and co-accused Kamaldeep was travelling on the same carrying contraband in a polythene packet. It cannot

be said at this stage that the petitioner was not in conscious possession of the said contraband. He however, does not dispute the fact that Kamaldeep has been granted the concession of bail, no recovery has been effected from the person of the petitioner, the petitioner is a first time offender and is in custody since 11.04.2022.

I have heard learned Counsel for both the parties.

Admittedly the recovery in the present case is from a polythene bag being carried by the co-accused Kamaldeep. Whether or not the petitioner was in conscious possession of the same is a matter of adjudication during the Trial. Kamaldeep has been granted the concession of bail albeit under Section 167(2) Cr.PC vide order dated 17.10.2022. The petitioner is a first time offender with no other case registered against him. He is in custody since 11.04.2022 and none of the prosecution witnesses had been examined so far. Therefore, the rigors of Section 37 of the NDPS Act can be relaxed to some extent in view of the attending facts and circumstances of the case.

In view of the above, without commenting on the merits of the case, the present petition is allowed and the petitioner-**Vinod Kumar** son of Sh. Krishan Lal is ordered to be released on bail subject to the satisfaction of learned CJM/Duty Magistrate, concerned.

The petitioner shall appear before the police station concerned on the first Monday of every month till the conclusion of the trial and inform in writing that he is not involved in any other crime other than the present case.

In addition, the petitioner (or any person on his behalf) shall prepare an FDR in the sum of Rs.50,000/- and deposit the same with the

Trial Court. The same would be liable to be forfeited in accordance with law in case of the absence of the petitioner from the Trial without sufficient cause.

The Petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

February 02, 2023
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>